

**DEPARTMENT OF STATE REVENUE**

02960368P.LOF

**LETTER OF FINDINGS NUMBER: 96-0368P RST**

**Gross Income Tax**

**For The Periods: 1988 Through 1990**

**NOTICE:** Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. Tax Administration -- Imposition of Negligence Penalty**

Authority: I.C. 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the imposition of the ten percent (10%) negligence penalty.

**STATEMENT OF FACTS**

The taxpayer is an out of state corporation that provides management and other services to a number of partnerships in which it is the majority partner. In addition to management services, the company also owns or leases most of the property used by the partnerships and reports rental income.

**ISSUE**

**I. Tax Administration -- Imposition of Negligence Penalty**

**DISCUSSION**

The taxpayer seeks waiver of the ten percent (10 %) negligence penalty imposed on a corporate income tax audit. The penalty was imposed after the Department determined in an audit that the taxpayer had underreported its corporate income tax.

Indiana Code 6-8.1-10-2.1 (d) states, in part, that if, "the deficiency determined by the Department was due to reasonable cause and not willful neglect, the Department shall waive the penalty."

Regulation 45 IAC 15-11-2 (b) also states, in part:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer.

The auditor found that adjustments were necessary to add non-reported income for management fee income, rental income, and partnership income and personal property sales. The taxpayer argues that its positions were taken in good faith and based on their interpretation of Indiana law. The taxpayer further argues that its business is complex as it conducts business in forty (40) states. The taxpayer cites these factors to contend that it exercised ordinary care and that the failure to report the tax was due to reasonable cause and not to willful neglect.

The taxpayer failed to report a substantial amount of total gross receipts that were subject to Indiana Gross Income Tax. The adjustments made in the audit show a significant underpayment of liability. The Department does not find the necessary reasonable cause to waive the penalty.

**FINDING**

The taxpayer's penalty protest is denied.